

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

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|----------------------------|---|-------------------------------------|
| Dontavious Jones, |) | Civil Action No.: 3:18-cv-02549-JMC |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER AND OPINION |
| |) | |
| Law Enforcement Ofc. R. W. |) | |
| Shumard, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the court for review of the Magistrate Judge’s Report and Recommendation (“Report”) filed on October 18, 2018. (ECF No. 15.) The Report addresses Plaintiff Dontavious Jones’s suit under 42 U.S.C. § 1983 and recommends that the court dismiss Plaintiff’s Complaint (ECF No. 1) without issuance and service of process. (ECF No. 15.) For the reasons stated herein, the court **ACCEPTS** the Report and **DISMISSES** Plaintiff’s Complaint.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards which this court incorporates herein without a full recitation. (ECF No. 15.) On September 17, 2018, Plaintiff, proceeding *pro se*, filed his Complaint, alleging constitutional violations pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Specifically, in his Complaint, Plaintiff alleges a false imprisonment claim for being convicted of assault and battery which he claims he could not have committed because he was allegedly in the custody of the Greenville County Juvenile Detention Facility when the crime was committed. (*Id.* at 7.) Plaintiff allegedly filed a grievance concerning the events which was dismissed for being incomplete. (*Id.* at 8.) Plaintiff asserts he could not appeal the dismissal. (*Id.*)

Plaintiff desires monetary damages and the removal of the assault charge from his record. (*Id.* at 9.) Plaintiff desires monetary damages and the removal of the assault charge from his record. (*Id.* at 9.)

On October 18, 2018, the Magistrate Judge issued a Report. (ECF No. 15.) The Report reasoned that Plaintiff failed to demonstrate or allege that he has successfully challenged his conviction, which is a requirement to recover damages for unconstitutional imprisonment. *Heck v. Humphrey*, 512 U.S. 477 (1994). For these reasons, the Report ultimately recommended that the court dismiss Plaintiff's Complaint. (*Id.* at 5.)

II. STANDARD OF REVIEW

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge only makes a recommendation to this court, and the recommendation has no presumptive weight. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The responsibility to make a final determination remains with the court. *Id.* at 271. As such, the court is charged with making *de novo* determinations of those portions of the Report and Recommendation to which specific objections are made. *See* 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). Thus, the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

III. DISCUSSION

Plaintiff was apprised of his opportunity to file objections to the Report on October 18, 2018. (ECF No. 15 at 6.) Objections to the Report were due by November 1, 2018. (ECF No. 15.) However, objections were due by November 4, 2018, if a party was served by mail or

otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (*Id.*) Plaintiff did not file an objection to the Report.

In the absence of objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Instead, the court must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). After a thorough and careful review of the record, the court finds the Magistrate Judge's Report provides an accurate summary of the facts and law in the instant case. (ECF No. 15.) Since no specific objections were filed by Plaintiff, the court adopts the Report herein. *Camby*, 718 F.2d at 199.

IV. CONCLUSION

After a thorough review of the Report and the record in this case, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 15) and incorporates it herein. Therefore, the court **DISMISSES** Plaintiff's Complaint (ECF No. 1).

IT IS SO ORDERED.



United States District Judge

November 14, 2018
Columbia, South Carolina